

ISSUES

The Administrative Law Judge ordered the respondent and insurance carrier to provide medical care and treatment and vocational rehabilitation assessment related to an alleged work-related injury occurring on July 24, 1990. The Kansas Workers Compensation Fund requests the Appeals Board to review the decision of the Administrative Law Judge as it alleges that claimant failed to make timely written claim. In addition to the issue of written claim, the Appeals Board is requested to determine whether the Workers Compensation Fund has standing to request this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

For the reasons expressed below, the Orders of the Administrative Law Judge finding that claimant has made timely written claim and is thereby entitled to benefits should be reversed.

(1) Based upon the evidence presented to date, claimant has failed to prove that he made timely written claim for benefits for an injury occurring on July 24, 1990.

K.S.A. 44-520a provides that written claim for compensation must be served upon the employer within two-hundred (200) days after the date of accident or, in cases where compensation payments have been provided, within two-hundred (200) days after the date of the last payment of compensation or date last medical treatment was provided. Claimant received medical treatment for his injuries from July 24, 1990 through September 28, 1990. Claimant mailed his written claim for benefits to the respondent under cover of a letter dated April 13, 1993. This claim is untimely.

Claimant contends a written accident report, coupled with the bill from the emergency room for services provided claimant on the date of accident, plus a written notation in the respondent's medical records that the injury was accepted under workers compensation, establishes that timely written claim was made. The Appeals Board does not agree. As held in Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973), a specific form is not required for written claim as it only needs to convey an intent to claim compensation under the workers compensation law. Looking at all of the facts and circumstances surrounding the accidental injury on July 24, 1990, the claimant has failed to prove that preparation of the accident report or presentation of the emergency room bill, if indeed the bill was presented, was intended by the claimant or the respondent to constitute written claim for benefits.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record. K.S.A. 44-501(a). "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record. K.S.A. 44-508(g).

It is the intent of the Legislature that the Workers Compensation Act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the Act to provide the protections of the Workers Compensation Act to both. The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees in cases arising thereunder. K.S.A. 44-501(g).

(2) The Kansas Workers Compensation Fund has standing to participate in the litigation of a workers compensation claim when it has been impled as a party.

Once impled, the Workers Compensation Fund becomes an interested party in the proceeding. The Appeals Board is aware of no statute or case law that limits the participation of the Workers Compensation Fund once they have been made a party to the proceeding. K.S.A. 44-551 provides that "any interested party" may request review by the Appeals Board. Therefore, the Workers Compensation Fund has standing to request review of decisions of the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Preliminary Hearings Orders of Administrative Law Judge James R. Ward, dated July 18, 1994, should be, and hereby are, reversed and set aside.

IT IS SO ORDERED.

Dated this ____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, PO Box 797, Topeka, KS 66601
Bret C. Owen, PO Box 2217, Topeka, KS 66601

Dortha O. Bird, 700 Jackson, Suite 200, Topeka, KS 66603
James R. Ward, Administrative Law Judge
George Gomez, Director